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19 UNITED STATES DISTRICT COURT  
20 NORTHERN DISTRICT OF CALIFORNIA  
21 OAKLAND DIVISION

22 CHASOM BROWN, WILLIAM BYATT,  
JEREMY DAVIS, CHRISTOPHER  
23 CASTILLO, and MONIQUE TRUJILLO  
individually and on behalf of all other  
similarly situated,

24 Plaintiffs,  
v.

25 GOOGLE LLC,  
26 Defendant.

27 Case No. 4:20-cv-03664-YGR-SVK

28 **PARTIES' PROPOSED STATEMENTS  
OF THE CASE**

Judge: Hon. Yvonne Gonzalez Rogers  
Courtroom 1 – 4th Floor  
Date: November 29, 2023  
Time: 9:00 a.m.

1 Pursuant to Paragraph 3(h) of the Court's Pretrial Instructions in Civil Cases, Plaintiffs and  
 2 Defendant Google LLC hereby submit the parties' proposals and positions for the Joint Proposed  
 3 Statement of the Case. The Parties have been unable to agree on a joint statement, and therefore  
 4 provide competing proposals.

5 **PLAINTIFFS' PROPOSAL<sup>1</sup>**

6 This is a civil class action brought by Plaintiffs against Google. Plaintiffs allege that Google  
 7 unlawfully collected, saved, and used their private browsing data when they used certain private  
 8 browsing modes to visit non-Google websites while not signed into their Google accounts.

9 Plaintiffs are pursuing seven claims that you will learn more about during this trial. Those  
 10 claims are being brought by those Plaintiffs individually and also as a class action. A class action is  
 11 a lawsuit that has been brought by one or more plaintiffs on behalf of a larger group of people who  
 12 have similar claims. Because of the large number of class members that are at issue in this case, not  
 13 everyone in the class needs to testify.

14 The two classes that I have certified for this trial—which you will hear more about later—  
 15 seek changes to Google's practices, which is referred to as injunctive relief. I will decide whether  
 16 the classes are entitled to any injunctive relief and if so what relief. That is not an issue that you  
 17 need to decide. Instead, you will be deciding the five Plaintiffs' individual claims, including their  
 18 requests for monetary relief. In other words, that is the money these five people are seeking for  
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20 <sup>1</sup> **Google's Objection:** Google objects to Plaintiffs' statement as misleading and intended to bias  
 21 the jury by suggesting that Plaintiffs' claims in this trial, for individual damages, are class claims  
 22 and suggesting that the jury will impact class wide injunctive relief. This reference is highly  
 23 prejudicial and misrepresents the role of the jury. The sole class claims are for injunctive relief  
 24 and the decision on whether injunctive relief should issue is a decision for the Court. Plaintiffs  
 25 also misleadingly claim the Court has certified two classes without making clear that two classes  
 26 simply relate to different private browsing modes. The reference to "classes that I have certified"  
 27 also prejudicially and inaccurately suggests that this Court blessed these classes and may lead  
 28 jurors to believe that the Court has already concluded Plaintiffs' claims have merit.

**Plaintiffs' Response:** Plaintiffs seek to fairly present the relevant issues to the jury consistent with  
 the Court's orders. The Court certified two classes for injunctive relief: 1) Incognito users (Class  
 1); and 2) other private browsing mode users (Class 2). Plaintiffs propose to correctly inform  
 jurors that injunctive relief is a matter for the Court. This is proper and important context for the  
 jury.

1 themselves, not either of the classes. Your role for the class part of this case is an advisory one,  
 2 meaning that your decisions on the five Plaintiffs' individual claims may influence my decision  
 3 about whether the classes are entitled to injunctive relief against Google.

4 **GOOGLE'S PROPOSAL<sup>2</sup>**

5 This case is about claims made by five Plaintiffs about Google's receipt of data when users  
 6 are in private browsing modes, such as Chrome Incognito.

7 When users visit websites that have chosen to use Google services such as advertising,  
 8 maps, and analytics, Google receives the following data to provide the service, regardless of  
 9 whether the users are in regular browsing mode or private browsing mode:

- 10       (a) the user's IP address;
- 11       (b) information identifying the user's device model and browser software;
- 12       (c) the URL (web-page address) of the web-page visited;
- 13       (d) geolocation information, if available; and
- 14       (e) information contained in Google cookies.

15 The Plaintiffs claim that Google improperly collected these five types data while they  
 16 browsed the web in Chrome's Incognito mode or another browser's private mode. They contend  
 17 that by collecting those data types while they were in private browsing mode, Google breached its  
 18 contract with its users, violated the Federal Wiretap Act, violated the California Invasion of  
 19 Privacy Act, invaded their privacy, intruded on their seclusion, and violated the Computer Data  
 20 Access and Fraud Act. Plaintiffs seek money damages. Plaintiffs have the burden to prove their  
 21 claims by a preponderance of the evidence.

22 Google denies all these claims. Google also asserts affirmative defenses. Google claims  
 23 that neither its Privacy Policy nor any of its other disclosures promised that using a private  
 24 browsing mode would block Google's collection of the data. Rather, Google contends that its  
 25

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26 <sup>2</sup> **Plaintiffs' Objection:** The Parties have extensively briefed their legal positions (motions to  
 27 dismiss, for class certification, for summary judgment, and for jury instructions). Plaintiffs object  
 28 to Google's proposed statement as imbalanced, misleading, prejudicial, and contrary to the Court's  
 prior rulings. Plaintiffs will be prepared to address this further at the Pretrial Conference.

1 disclosures make clear that Chrome's Incognito mode and other private browsing modes are  
 2 intended to provide *local* privacy—meaning privacy from others who might use the same device,  
 3 like a spouse, roommate or child—by deleting browsing history and cookie information from the  
 4 user's system when they close their private browsing session. Google also contends that Incognito  
 5 mode provides privacy from online entities (including Google) by making the data anonymous (in  
 6 other words, it is not connected with the individual user or their Google account). Google  
 7 contends that it disclosed the data collection in its Privacy Policy, and that the Plaintiffs consented  
 8 to that policy and the collection of data set out in the policy. Google has also asserted additional  
 9 defenses that will be explained to you in the jury instructions. Google has the burden to prove its  
 10 defenses by a preponderance of the evidence.

11 Plaintiffs deny Google's affirmative defenses.

12

13 Respectfully submitted,

14

15 DATED: November 1, 2023

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## ATTESTATION

I, Andrew H. Schapiro, hereby attest, pursuant to N.D. Cal. Civil L.R. 5-1, that the concurrence to the filing of this document has been obtained from each signatory hereto.

DATED: November 1, 2023

By: /s/ Andrew H. Schapiro